

CAUSE TITLE**SESSIONS CASE NO.189(NL)2017.**

Informant : Sri Dipu Das.

Accused : Sri Prabhat Das.
S/O Lt. Jagat Das.
Vill. & P.O. Bhimpara Balijan Gaon.
P.S. Boginadi.
Dist. Lakhimpur.

ADVOCATES :

For the State: Mr. Jagneswar Saikia, the learned Public Prosecutor.

For the Defence : Mr. Bulumoni Das, Advocate.

**IN THE COURT OF SESSIONS JUDGE : LAKHIMPUR :
AT NORTH LAKHIMPUR.**

P R E S E N T - S.P. Khaund, (MA Economics, LLB),
Sessions Judge,
Lakhimpur, North Lakhimpur.

SESSIONS CASE NO.189(NL)2017.

GR Case No.2013 of 2017.

State of Assam.

-versus-

Sri Prabhat Das.

Charge : Under Section 302 IPC.

Date of evidence. : 08.01.2019, 18.09.2019, 07.01.2020
and 27.02.2020.

Date of argument. : 26.11.2020.

Date of Judgment. : 10.12.2020.

J U D G M E N T

1) An excerpt of the prosecution case is that on 09.07.2017 at about 9 pm, Sri Prabhat Das (hereinafter the accused) violently assaulted his father, Jagat Das (hereinafter the deceased) causing his death. The deceased was found lying in the verandah of his house. An ejahar regarding this incident was lodged by the other son of the deceased, Sri Dipu Das, which was registered as Boginadi P.S. Case No.152/ 2017 under Section 302 of the Indian Penal Code (IPC for short). The Investigating Officer (I.O. in short) embarked upon the investigation. He went to the place of

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occurrence, made preparations for inquest, and prepared the sketch map. He forwarded the body for autopsy and recorded the statements of the witnesses. On finding prima facie materials, the I.O. submitted charge-sheet against the accused person under Section 302 IPC.

2) On appearance of the accused person, copies were furnished and thereafter, this case was committed to this court for trial by the learned Chief Judicial Magistrate, Lakhimpur, North Lakhimpur, vide order dtd. 21.11.2017 in GR Case No.2013 of 2017. After hearing both the sides, a formal charge under Section 302 IPC was framed, read over and explained to the accused person. The accused person abjured his guilt and claimed innocence.

3) To substantiate its stance, the prosecution adduced the evidence of Seven witnesses including the Medical Officer (M.O. in short) and the I.O. and the defence cross-examined the witnesses to refute the charges. The prosecution exhibited various documents.

Submissions :

4) The learned Public Prosecutor, Mr. Jagneswar Saikia laid stress in his argument that this case has been proved beyond a reasonable doubt, and the accused deserves capital punishment as he eliminated a person, who gave him life.

5) The learned defence counsel, Mr. Bulumoni Das laid stress in his argument that the prosecution failed to prove this case beyond a reasonable doubt and the accused deserves acquittal.

Points for determination :

6) To decide this case in its proper perspective, the following point is apposite for proper adjudication of this case :

i) Whether on 09.07.2019 at about 9 pm, the accused committed murder of his father, Jagat Das, by intentionally causing such injuries, which were sufficient in the ordinary course of nature to cause death?

Decision thereon and the reasons for the decision :

7) To decide this case in its proper perspective, it is necessary to delve into the evidence.

8) The informant, Sri Dipu Das testified as PW.1 that the accused is his elder brother. The incident occurred about a year ago. At the time of incident, he was driving a vehicle in Guwahati. At about 6 am, his sister-in-law, Smt Jonali Das informed him over phone that his father was lying dead in front of his house at village, Choudhamile Tiniali, Boginadi. He returned to his house on the same evening, and saw his father's body lying in front of his house. Thereafter, the police came and took away his father's body. After post mortem, his father's body was handed over to them for funeral rites. At the time of incident, he and his father, Jagat Das were staying in the same household. His mother had already passed away. His elder brother, Prabhat Das was staying in a separate house. There are about ten houses between his house and his brother's house. His father was ailing at the time of incident, and his father was addicted to alcohol. He did not know how his father passed away. He asked his sister-in-law about the cause of his father's death, but, his sister-in-law did not know how his father passed away. Then, he lodged the ejahar, Ext.1, wherein Ext.1(1) is his signature. He has implicated his brother in the FIR, but he has not written the FIR. Someone else scribed the FIR. The ejahar was not read over to him after it was

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written. He had not given his brother's name as accused in the ejahar.

9) Thus, the evidence of PW.1, who himself lodged the ejahar, exonerates the accused person. But, he has testified that he did not accuse his brother of having killed his father. The accused is his brother, and Smt Jonali Das is the accused person's wife. The evidence of PW.1 does not at all implicate that the accused is complicit. The body was found in front of their house. Had the body been inside the house, the accused could have been roped in as complicit. Moreover, the accused person resides in a separate house with ten different house between the accused person's house and PW.1's house. Smt Jonali Das testified as PW.2 that the accused is her husband, and the deceased was her father-in-law, who passed away about one year nine months back. At that time, her father-in-law was staying separately in a separate house with his other son, Sri Dipu Das. The other house is about ten houses away from the accused person's house. PW.2 further testified that on the day of the incident, as usual, at about 6 am, she went to her father-in-law's house to clean and sweep his house, and then she saw her father-in-law's body lying in front of his house. Then, she called Dipu Das, who was in another person's house. When she came alone to Dipu Das's house, she noticed people had assembled at the place of occurrence. At about 7 am, the police from Boginadi PS came and took away her father-in-law's body. The funeral rites were observed in the same evening. At the time of the incident, her husband was in Guwahati and he was working as driver. Her father-in-law was ailing at the time of the incident. Her father-in-law was also addicted to alcohol. Her father-in-law died a natural death. She did not know who lodged the ejahar. She did not know if her husband has been made accused in this case.

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10) As Smt Jonali Das is the accused person's wife, she tried to screen her husband. Her evidence does not at all implicate that the accused is complicit. Her evidence is contradictory to the evidence of PW.1. PW.1 testified that he was working as driver in Guwahati, while PW.1's evidence depicts that her husband was a driver in Guwahati. PW.1 testified that he was driver in Guwahati at the time of the incident. While PW.2 testified that PW.1 was in his neighbour's house when she saw her father-in-law's body, and she immediately called PW.1, and she and PW.1 came to the place of occurrence. Both PW.1 and PW.2 are related to the accused. Even if the accused was complicit, they tried to shield him and save him from being incarcerated.

11) The evidence of PW.1 and PW.2 does not incriminate the accused person. Sri Ramesh Das @ Rameswar testified as PW.3 that the accused person's and the informant's houses are about 1 1/2 kms away from his house, but in the same village. The incident occurred about two years ago. The incident took place at night. On the following morning, he learnt from the villagers that Jagat Das passed away. The villagers did not inform him how the deceased passed away. Then, he went to the deceased's house and saw the body lying in the verandah. His body was covered and he did not look at the body or take a look at the injury. The deceased died as a result of the injuries sustained by him. He did not ask the villagers in which part of the body, the deceased sustained injuries. He did not know who killed the deceased. He returned to his house. He did not meet the police.

12) In his cross-examination, he (PW.3) testified that the deceased was addicted to alcohol. The deceased does not reside with the accused. He resides in a separate house with the

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informant. Thus, it is clear from the evidence of PW.3 that he was not wary of the incident and his evidence does not implicate the accused. Similarly, the evidence of PW.4, Sri Ghana Kanta Das also does not implicate that the accused is complicit. He is the Ward Member of Bhimpara Baliyan Under Boginadi Gaon Panchayat. He testified that the accused person's house is about 1 km away from his house, but in a different village. The accused used to reside in a different house. He did not reside with his father. He used to reside in a separate house within same homestead. The incident occurred about two years ago. The incident occurred at night, but on the following day at about 10.30 am, he learnt from the villagers that the deceased passed away. Then, he went to the deceased's house and he saw the body lying in the verandah. The body was not covered, but he did not take a look at the body to ascertain whether the deceased sustained any injury leading to his death. The villagers were also present at that time. He did not ask any of them as to how Jagat Das passed away. He saw the police in the house. The police had taken down his signature on a piece of paper and then, he returned to his house.

13) The evidence of Sri Biren Das, who testified as PW.5, does not at all implicate that the accused is complicit. He testified that the accused and the deceased used to reside in separate houses. His house is adjacent to the house of the accused. The incident occurred about two years back. On the morning of the incident while he was returning home, he noticed Jagat Das lying in the verandah. Then, he went to Jagat Das's house and saw his dead body. He did not notice any injury on his body. He did not take a look at his body to ascertain whether Jagat Das sustained any injury. When he went out of the house, he saw many people assembled in the house. He did not know who killed Jagat Das.

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The accused was in his house along with his wife and two children. He saw Jagat Das's other son, Sri Dipu Das in the place of occurrence, but Dipu Das did not inform him how his father passed away. The local people also did not inform him how Jagat Das passed away. Then, he returned to his house. Thereafter, the police came to the deceased's house, and then, he again went to the deceased's house. The police took his signature on a piece of paper, and thereafter, the police took away the body.

14) It is clear from the evidence of the M.O., Dr. Dhrubajyoti Borgohain that the deceased sustained fatal injury on his head. The medical officer testified as PW.6 that on 10.07.2016, he was working as Sr. Medical & Health Officer at North Lakhimpur Civil Hospital, and on that day, he performed Post mortem examination on the dead body of Jagat Das, 55 years, male, and found the following :

“ I. **EXTERNAL APPEARANCE** :

Condition of subject stout emaciated, decomposed etc. :

Average built. Black complexion. Rigor mortis present.

Wounds position and character, Bruise position, size & character and Mark of ligature on neck, dissection etc. :

Multiple abrasions, bruise and swelling in the neck and face. Left black eye and left sided scalp swelling.

II. **CRANIUM AND SPINAL CANAL** :

Scalp, skull and vertebra :

Heamatoma and swelling of left side of the scalp.

Membrane :

Blood in the subarachnoid space.

Brain and spinal cord :

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Laceration of brain matters and big heamatoma in left temporo parietal area.

III. **THORAX** :

Walls ribs and cartilages :

Multiple ribs fracture of the both side of the chest.

Plurae, Larynx and trachea, Right lung, Left lung, Pericardium, Heart and Vessels :

Blood in the medestinum.

IV. **ABDOMEN** :

1. Walls : NAD.

2. Peritonum : NAD.

3. Mouth, pharynx, oesophagus : Blood in the oral cavity.

4. Stomach and its contents : NAD.

5. Small intestine and its contents : NAD.

6. Large intestine and its contents : NAD.

7. Liver : NAD.

8. Spleen : NAD.

9. Kidneys : NAD.

10. Bladder : NAD.

11. Organs of generation, external and internal : NAD.

V. **MUSCLES, BONES AND JOINTS** :

1. Injury : NAD.

2. Disease or deformity : NAD.

3. Fracture : Multiple ribs fractures on both sides of the chest.

4. Dislocation : NAD.

MORE DETAILED DESCRIPTION OF INJURY OR DISEASE :

Multiple abrasions, bruises in the neck and face. Left black eye and left sided scalp swelling. Blood in the subarachnoid space.

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Laceration of brain matters and big heamatoma in left temporo parietal area.

The M.O. opined that the cause of death is due to coma as a result of laceration of brain matters as well as big left temporo-parietal hematoma, which is ante mortem in nature.

The M.O. proved the Post Mortem Examination Report as Ext.2, wherein Ext.2(1) is his signature in it. Ext.2(2) is the signature of the Joint Director of Health Service, North Lakhimpur, and Ext.2(3) is the signature of the Supdt. of North Lakhimpur Civil Hospital.”

15) It is as clear as crystal that the deceased was bludgeoned to death. Although, a strong suspicion lies on the accused, yet the witnesses failed to implicate the accused. The FIR was lodged against the accused, but the informant himself retracted the statement of the FIR. The accused took the plea that he was absent when his father was killed. He in his statement u/s 313 CrPC stated that he is a driver and he was away from the place of occurrence, on duty. The poignant point is that the accused does not reside in the same house with his father. His father's body was found lying in the verandah. The accused was not last seen with the deceased. The circumstances does not implicate that the accused is complicit. Due to lack of evidence, the accused gets the benefit of doubt.

16) The prosecution failed to prove beyond a reasonable doubt that the accused caused injuries, which resulted in his father's death. Thereby, it is held that the prosecution failed to prove beyond a reasonable doubt that the accused committed murder

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of his father, Jagat Das by intentionally causing the fatal injuries on his chest and head.

17) The accused, Sri Prabhat Das is acquitted from the charges under Section 302 IPC on benefit of doubt and is set at liberty forthwith.

18) There appears to be no aggrieved in this case. It is clear that the witnesses tried to shield the perpetrator of the crime. Nobody deserves compensation. So, this case is not recommended for compensation.

Judgment is signed, sealed and delivered in the open Court on the 10th day of December, 2020.

(S.P. Khaund)
Sessions Judge,
Lakhimpur, North Lakhimpur.

Certified that the Judgment is typed to my dictation and corrected by me and each page bears my signature.

(S.P. Khaund)
Sessions Judge,
Lakhimpur, North Lakhimpur.

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APPENDIX**Sessions Case No.189(NL)2017.****LIST OF WITNESSES FOR PROSECUTION :**

1. PW.1 - Sri Dipu Das.
2. PW.2 - Smt Jonali Das.
3. PW.3 - Sri Ramesh Das @ Rameswar Das.
4. PW.4 - Sri Ghana Kanta Das.
5. PW.5 - Sri Biren Das.
6. PW.6 - Dr. Dhruvajyoti Borgohain, M.O.
7. PW.7 - Sri Utpal Sarma, I.O.

LIST OF EXHIBITS FOR PROSECUTION :

1. Ext.1 - Ejahar.
2. Ext.2 - Post Mortem Examination.
3. Ext.3 - Sketch map.
4. Ext.4 - Charge-sheet.

LIST OF MATERIAL EXHIBITS FOR PROSECUTION :

Nil.

LIST OF WITNESSES FOR DEFENCE :

Nil.

LIST OF EXHIBITS FOR DEFENCE :

Nil.

(S.P. Khaund)
Sessions Judge,
Lakhimpur, North Lakhimpur.

Transcribed and typed by :
Sri Satyabrata Kshattri, Stenographer.